

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

IN RE: ETHICON, INC. PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LIGATION <hr/> THIS DOCUMENT RELATES TO ALL CASES	Master File No. 2:12-MD-02327 MDL No. 2327 JOSEPH R. GOODWIN U.S. DISTRICT JUDGE
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**MOTION FOR APPLICATION OF PRETRIAL ORDER NO. 11
TO THIRD PARTY SUBPOENAS**

Defendants Ethicon, Inc. and Johnson & Johnson (collectively, “Defendants”) move the Court for application of Stipulated Protective Order (Pretrial Order No. 11) to documents received in response to third party subpoenas. In support, Defendants state as follows:

As of this time,¹ Plaintiffs have issued subpoenas requiring the production of documents to third parties Sunoco, Inc., Bodycote Broutman, Inc., Secant Medical, LLC, and Galbraith Laboratories. (Docket Nos. 538, 539, 540 & 541.) Each of the subpoenas seeks, among other things, documents related to the design, manufacturing, testing and analysis of mesh products. Although Defendants do not know what documents, if any, these third parties may have in their possession that are responsive to the subpoenas, any such documents may contain confidential information as defined by Fed. R. Civ. P. 26(c) and Section II.B.(2)-(3) of the Stipulated Protective Order (Pretrial Order No. 11).

¹ It is possible that other subpoenas have been issued about which Defendants are currently unaware or will, in the future, be issued. Therefore, any ruling by the Court should apply equally to all third party subpoenas issued to Defendants’ suppliers, vendors, consultants or contractors.

If there is no mechanism to protect the confidential information, it may enter the public domain, which is contrary to the intent of the Stipulated Protective Order. Accordingly, Defendants respectfully request that the Court enter an order applying the Stipulated Protective Order to any documents received via third party subpoena. Additionally, Defendants request that the order put in place a mechanism whereby the documents received by third parties will not be disseminated until Defendants have the opportunity to review them and make any appropriate confidentiality designations. To be clear, Defendants do not seek to have the entirety of the documents produced by third parties designated as confidential. Instead, Defendants simply seek a procedure whereby Defendants have the opportunity to review and properly designate any confidential material prior to any distribution or use of such documents. This insures that the protections afforded by Fed. R. Civ. P. 26(c)(1)(G) concerning trade secret or other confidential research, development, or commercial information are afforded to Defendants.

Counsel for Defendants has attempted to meet and confer with counsel for Plaintiffs on this issue. Although the parties have not yet been able to discuss this issue, Defendants file this motion to preserve all of their rights. Counsel for Defendants will continue to work with counsel for Plaintiffs to hopefully reach a joint resolution of this issue.

Respectfully submitted,

ETHICON, INC. AND
JOHNSON & JOHNSON

/s/ David B. Thomas

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CERTIFICATE OF SERVICE

I, David B. Thomas, certify that on May 6, 2013, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF participants registered to receive service in this MDL.

/s/ David B. Thomas

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